STATEMENT OF PURPOSE AND JUSTIFICATION

OF

A BILL

To amend titles 10 and 14, United Statea Code, and the Military Peraonnel and Civilian Employees' Claims Act of 1964, with respect to the aettlement of claima againat the United Statea by membera of the uniformed aervices and civilian officera and employees of the United States for damage to, or loaa of, peraonal property incident to their aervice, and for other purposes.

Purpose

To increaae the present statutory adminiatrative payment authority of the Secretary of Defense, the Secretariea of the military departments, and the heads of all Government agencies from $6,500 to $10,000, make thia increaaed authority retroactive to 1952 in a proper case, and repeal the annual reporting requirement on the payment of claims settled.

Hiatory

The legialative history reveala that the firat Military Peraonnel Claims Act was enacted on April 9, 1816 (3 Stat. 261). That atatute and reenactmenta thereof limited the type of claima and the claaaes of peraona who were entitled to the preacribed benefits. A payment made on such a claim is in the nature of a gratuity and is aaid to be <u>ex gratia</u> rather than <u>ex culpa</u>, or by reason of Government cauaation. Before 1964, the armed forces and the Department of Defenae were the only agencies with authority to pay peraonnel claims. Thia authority was originally enacted aa the Military Personnel Claima Act of 1945 (59 Stat. 225). Both the Houae and Senate Committeea on Claima, in reporting favorably on the bill (H. R. 2068, 79th Cong.) which became law, atated that the primary purpose of the propoaed legislation was to provide a aingle, clear, definite, and workable statute for the aettlement of claims of military personnel and civilian employeea of the War Department or of the Army for the losa of their peraonal property incurred while in the service and to repeal certain statutea which had been found to be obsolete or unworkable and not appropriate to present conditions (H. Rept. 237, 79th Cong., 1st Sesa. (1945), p. 1; S. Rept. 276, 79th Cong., lat Sess. (1945), p. 2; U.S. Cong.

Serv. 1945, p. 715). That Act authorized the settlement and payment of claims without any monetary limitation. However, it required that the property be determined to be "reasonable, useful, necessary, or proper under the attending circumstances". It was later made applicable to the Navy, Marine Corps, Coast Guard, and Air Force (59 Stat. 662; 60 Stat. 56; 61 Stat. 508). In 1949, Coast Guard claims authority was incorporated in a separate statute that paralleled the language of the basic law (14 U.S.C. 490).

Amendments to the basic Military Personnel Claims Act of 1945 were proposed in 1952 to cover the claims of certain civilian employees of the Department of Defense who were not covered by that law, as well as the claims of certain survivors of all personnel covered, and to extend from one to two years the period during which a claim must be presented. These amendments were contained in the Act of July 3, 1952, ch. 548 (66 Stat. 321), and the Act of August 23, 1958, Pub. L. 85-738 (72 Stat. 832), as to those applicable to the Coast Guard (14 U.S.C. 490). However, during consideration of the 1952 legislative proposal (H. R. 404, 82d Cong., 2d Sess.) on the floor of the Senate, it was amended to include a maximum monetary payment limitation of $2,500 (98 Cong. Rec. 7797).

After the 1952 amendment, many private claim bills were introduced and some were enacted to compensate certain claimants for the remaining part of their loss after payment of the maximum administrative amount authorized by law. However, this preferential treatment to some individuals was not available to others similarly situated since their meritorious claims were not sponsored as private claim bills. Accordingly, on January 3, 1955, the Department of Defense, by executive communication, recommended to the Congress that the maximum limitation be removed from the statute. That proposal was introduced as H. R. 3996, 84th Congress, which passed the House of Representatives. The Senate amended the bill to provide for a $4,000 maximum payment limit or ceiling (S. Rept. 1598, 84th Cong., 2d Sess. (1956); 2 U.S. Cong. & Admr. News 1956, p. 2716). In conference, agreement was reached on a limitation of $6,500. This change in the maximum amount is contained in the Act of June 7, 1956, ch. 376 (70 Stat. 255). The statutory ceiling of $6,500 for claims paid under the Military Personnel Claims Act of 1945 has not changed since then.

The Military Personnel and Civilian Employees' Claims Act of 1964 (78 Stat. 767), which was enacted by the 88th Congress, extended the coverage of claims statutes to include civilian officers and employees of all Government agencies, as defined in that Act, but retained the $6,500

limitation. It also consolidated and reenacted the statutes permitting the payment of claims of members of the armed forces and civilian officers and employees of the military departments and the Department of Defense. The purpose of this statute was not to alter the preexisting substantive law but merely to extend its coverage to include all Government officers and employees (S. Rept. 1423, 88th Cong., 2d Sess. (1964)).

Justification

Although a large number of the claims presented under these laws can be settled by the payment of no more than a few hundred dollars, less than 1 percent of the claimants who have suffered excessive loss or damage cannot be fully reimbursed for the loss of all or most of their worldly possessions. Catastrophic losses of this type usually occur during permanent change of station (PCS) movements when household goods and effects are being transported by Government contract carriers or located in nontemporary or in-transit storage, as authorized by law. For example, a vessel is wrecked, flooding the cargo hold; a moving van is wrecked in an accident; or a warehouse is destroyed by fire or flood. In all of these cases the carrier or warehouseman's liability is specifically limited by the Government contract which takes advantage of the lowest possible rate for the transportation or storage of household goods. These costs would be prohibitive if complete liability was assumed by the carrier or warehouseman, as in the case of ordinary commercial shipments and storage. (See section 22 of the Interstate Commerce Act (49 U.S.C. 22); ICC Ex Parte No. MC 19 ruling; 38 Comp. Gen. 768.)

Other catastrophic losses occur in quarters assigned or otherwise provided by the Government, when private property is destroyed by typhoons, hurricanes, fires, military aircraft crashes, or similar disasters.

Military department claims experience indicates that possession of personal property by its personnel is reasonable, useful, or proper under most circumstances. However, the fair market value of the property lost or destroyed sometimes exceeds the $6,500 limitation contained in the current law, which nonreimbursable loss imposes the greatest hardship on those members of the military service who are least able to bear the burden. Service efficiency and morale would be seriously affected and the retention of essential trained personnel would be greatly hampered if its personnel and their families are required to lead an austere life without some of the normal conveniences and comforts of the

average home in the United States. Furthermore, the costs of household goods and other personal effects have steadily risen since World Wsr II because of rising costs in material and labor.

It follows that since the Government has accepted responsibility for the transportation and storage of household goods and personal effects of military department personnel and responsibility for the loss or damage for their property incident to service, a limitstion of the monetsry payment amount, such ss the $6,500 limitation, is unduly restrictive. No payment can be made until it is determined that possession of the property is reasonable, useful, or proper under the circumstances and the loss is otherwise covered under the statute. As a safeguard in this area, the military departments have developed a uniform Deprecistion Allowance List that is used as a guide in adjudicating these claims, in addition to apprsissls snd visusl inspections of the property, ss wsrranted. Under this policy, a reasonable depreciation is normally made of most items of personal property. In depreciating an item, the type of article involved, cost, length of time in use, condition when lost, as well as other factors, are taken into consideration. Items of personal property usually fall within one of three cstegories and are depreciated accordingly. The first category is composed of those items which have a relatively slow rate of depreciation such as metal, wood, or glsss. The second category consists of items which have a moderate rate of depreciation such as fountain pens, pencils, radios, books, and leather goods. The third category covers items which depreciate rapidly snd is composed of materials which deteriorate quickly, such ss cloth, psper, or articles affected by changes in fashion. Furthermore, when it is determined thst sn item was bought for sn exorbitant price, it is military department policy to allow an amount for which a reasonable substitute article could have been purchased, and to depreciate accordingly. In addition, the policy sets a maximum amount allowable on some categories of items such as photogrsphic equipment, paintings, major appliances, and silverware.

The authorized Allowance List is under continuous study and is changed when warranted by facts and circumstances that sffect the values of items listed after consultation with civilian and Government agencies that are experienced in the useful life of depreciable property. The fairness of this list has been recognized by the Congress since the amounts recommended by the military departments for swsrds in private clsim bills have generslly been sccepted (Private

Laws 83-319 (68 Stat. A33), 87-199 (75 Stat. 920), and 87-303 (76 Stat. 1270)).

Catastrophic losses are at preeent the exception rather than the rule. However, there have been a number of recent typhoons and warehouse fires which totally destroyed all of the household goods of a number of servicemen. Under the applicable law, some of these personnel can be only partly reimbursed for their losses. This incomplete payment has an adverse effect on service morale and has resulted in additional private claim bills to compensate those persons who have suffered excessive loss or damage.

Since a monetary limitation was included in the 1952 and 1956 amendments to the Military Personnel Claims Act of 1945, the military departments have either not opposed private claim bills for the meritorious balance due claimants after payment of the $6,500 maximum under this general legislation, or they have actively sponsored such bills to compensate those persons. However, since the 1956 amendment, the Congress has enacted only two of these bills (Private Laws 87-199 (75 Stat. 920) and 87-303 (76 Stat. 1270), although the military departments consider other claim bills to be as meritorious as those given preferential treatment. Action on these bills indicates, however, that the Congress believes that servicemen should carry private insurance on their own property. The basis for equitable relief to the above-mentioned claimants was the fact that they did not request or anticipate the transportation of their property, and did not have the opportunity to insure their property against damage in transit or storage as they might otherwise have (S. Rept. 891, 87th Cong., 1st Sess. (1961) on H. R. 3606; Private Law 87-199 (75 Stat. 920)).

It appears unreasonable to make military department personnel assume all or a part of a statutory obligation of the United States by requiring them to obtain private insurance at their own expense to cover losses of property incident to the hazards of their military service. Nevertheless, the military departments have attempted to conform with Congressional policy by furnishing individual instructions (pamphlets) to their personnel and dependents in transportation cases and generally counseling them to obtain insurance at least on items of extraordinary value. Furthermore, pursuant to military department regulations, the amounts recovered or recoverable from an insurer, carrier, or warehouseman are deducted from the amount otherwise payable to a claimant by the department concerned. Assignments of a claimant's rights are obtained and when warranted by the facts and applicable

law, appropriate action is taken to obtain recovery of the amount owed by the insurer or contractor.

Many military department personnel, who can afford to pay for private insurance coverage, obtain transportation, fire, and other types of insurance. However, the type of insurance available in transportation cases is not always the best since cheap trip transit policies offer very little, if any, protection. Also, in partial insurance coverage cases, some personnel have discovered that they were self-insurers of a part of their loss in total loss cases under the terms of their insurance policy. Full insurance coverage of the "floater" type (portal to portal) or full insurance on certain large and valuable items is very expensive and is actually beyond the means of low rank personnel. Also, it is not available during movements to some overseas areas. The amounts expended each year by military department personnel to purchase personal insurance is indeterminable but the claims processed reveal that it amounts to many thousands of dollars annually. It therefore is apparent that the cost of such insurance results in an unwarranted reduction in pay when it is privately obtained by personnel to prevent an even greater out-of-pocket loss in case their property is destroyed in an accident or other disastrous event and its value exceeds the statutory payment limit of $6,500.

The proposed legislation is designed to eliminate this inequity to personnel who suffer the loss of all or most of their property without fault or neglect on their part. The statutory payment limitation is not appropriate to present conditions since the burden of the loss is placed on those who can least afford to suffer the uncompensated loss of part of their life possessions in disastrous accidents or incidents related to military contracts and duty assignments in which they have little or no choice. This proposal would not constitute a departure from the statutory pattern which has been established in this area. On the contrary, the proposed revision would bring the monetary limitation more nearly into conformity with existing Federal laws relating to claims for damage caused by the United States, which either authorize full payment or referral of the claim or the unpaid balance to the Congress (10 U.S.C. 2733, 2734, 4802, 7622, 9802).

In contradistinction to this statutory payment limitation, the Congress annually authorizes the transportation, packing, crating, temporary storage, drayage, and unpacking of household goods and personal effects of Defense Department personnel not in excess of 11,000 pounds in any one shipment

(section 515, Pub. L. 88-446 (78 Stat. 477). DOD Joint Travel Regulations further restrict the overseas transportation of personal property, in accordance with the grade and rank of the personnel involved in the movement. This has accounted for the rise in warehouse losses in the United States since the major portion of a serviceman's property is stored in the United States while he is overseas, and the more stored the greater the chance of total loss.

Enactment would also be in line with decisions in cases which favor employees when attempts have been made to make them assume the Government's obligations for torts committed in the performance of duty by attempting to make the employee indemnify the United States for judgments or payments made in settlement of third party claims (U.S. v. Gilman, 347 U.S. 507, 74 S. Ct. 695; 40 Op. Atty. Gen. 38).

Enactment of this legislative proposal would be just and proper under the facts and circumstances outlined. It would also improve morale and efficiency by more adequately covering catastrophic losses and obviate the necessity for the purchase of private insurance by personnel covered under these laws. An increase in the maximum limitation of $6,500 to $10,000 would permit the administrative settlement of about 99 percent of the claims presented. It also would relieve the Congress of the burden of considering many private claim bills that are now sponsored because the payment limitation is not based on current equities and property values.

This legislative proposal would be retroactive to July 2, 1952, the date on which the first monetary limitation was imposed. The 1956 amendment was given similar retroactive effect (Pub. L. 571, 84th Cong. (70 Stat. 255)). It would not permit the presentation of claims barred by the two-year statute of limitations. It would only authorize the reconsideration of certain meritorious claims heretofore presented, settled, and paid in the amount of $6,500, for which the claimant has not been reimbursed for the remaining part of his disastrous loss. It is considered equitable to provide for the reconsideration of claims settled and paid in the statutory amount of $6,500 when the claimant's loss was greater than the payment, and he requests reconsideration, as proposed. To accomplish this, section 2735 of title 10, United States Code, and section 4 of the Military Personnel and Civilian Employees' Claims Act of 1964, must be temporarily suspended with respect to such claims, as provided in section 4 of the legislative proposal.

The repeal of section 2732(f) of title 10, United States Code, and section 3(e) of the Military Personnel and Civilian Employees' Claims Act of 1964, requiring annual reports of the administrative settlement and payment of claims by the Secretary of Defense, the Secretaries of the military departments, and the heads of all Government agencies is included in the interest of economy. Based upon experience within the Department of Defense, the accumulation of statistics and preparation of reports has proved to be an expensive operation. However, if the Congress should desire a report at any time it could be furnished upon request. The fact that, prior to the enactment of the 1964 Act, comparable legislation which gave the Coast Guard authority to pay claims of this type, 14 U.S.C. 490, did not contain a requirement for making these reports indicates the lack of necessity for them. There are also several other claims statutes that do not contain reporting requirements, such as sections 2733, 2734, and 2736 of title 10, United States Code, and others for which reporting provisions have been repealed (Act of June 29, 1960, Pub. L. 86-533 (74 Stat.245)).